
OLR Bill Analysis

sSB 187

AN ACT CONCERNING FEDERAL HOME LOAN BANKS AND THE INSURERS REHABILITATION AND LIQUIDATION ACT.

SUMMARY:

This bill modifies the Insurers Rehabilitation and Liquidation Act (IRLA) (see BACKGROUND). It allows certain activities to proceed regardless of current prohibitions when a Federal Home Loan Bank (FHL Bank) is a party to any pledge, security, credit, loan, advance, reimbursement, or guarantee agreement with an insurance company under conservation, rehabilitation, liquidation, or administrative supervision by the Insurance Department.

Specifically, the bill eliminates the automatic stay that an application or petition for a delinquency proceeding, rehabilitation, or liquidation order currently grants when an FHL Bank is a party. Under current law, the stay prohibits anyone other than a receiver from engaging in a wide range of activities that might lessen the value of an insurer's assets or prejudice the rights of policyholders, creditors, or shareholders. These include transferring property, wasting assets, and obtaining judgments against the insurer or its policyholders, among other things. The stay becomes permanent and survives the entry of a conservation, rehabilitation, or liquidation order.

Under the bill, a receiver or any other person cannot avoid a transfer or obligation that would be considered fraudulent under current law if it arises in connection with any agreement to which an FHL Bank is a party. But the receiver or other person can avoid the transfer or obligation if it was made or incurred with actual intent to hinder, delay, or defraud the insurer, receiver, or creditors. Current law (1) makes every person receiving any property or benefit from an insurer through a fraudulent transfer or obligation incurred personally liable and accountable to the liquidator and (2) allows receivers to avoid the

transfer or obligation. A “fraudulent transfer or obligation incurred” is a transfer made or obligation incurred, within one year before the successful filing of a petition for rehabilitation or liquidation, without fair consideration or with actual intent to hinder, delay, or defraud creditors.

The bill also allows an insurer’s liquidator to give preference to creditors when an FHL Bank is a party. A “preference” is a transfer of property to or for the benefit of a creditor, within one year before the filing of a petition for liquidation, that enables the creditor to obtain a greater percentage of debt than another creditor of the same class. Current law bars such a preference.

Lastly, the bill adds requirements on an FHL Bank that exercises its rights to collateral pledged by a member insurer subject to delinquency proceedings.

EFFECTIVE DATE: October 1, 2014

FHL BANK REQUIREMENTS WHEN EXERCISING COLLATERAL RIGHTS

Under the bill, if the FHL Bank exercises its rights to collateral pledged by a member insurer that is subject to delinquency proceedings, the FHL Bank must repurchase any outstanding capital stock that exceeds the amount the insurer must hold as a minimum investment. The FHL Bank must do this if it determines in good faith that the repurchase is (1) permissible under applicable laws and regulations and its capital plan and (2) consistent with its current capital stock practices for its entire membership.

After a receiver is appointed for the insurer, the FHL Bank must, within 10 business days after a request from the receiver, provide the receiver with a process and develop a timeline for the:

1. release of the insurer’s collateral that exceeds the amount needed to support any remaining secured obligations after repaying any loans;

2. release of any of the insurer's remaining collateral;
3. payment of any fees the insurer owes and the operation of deposits and other accounts the insurer has with the FHL Bank; and
4. possible redemption or repurchase of the FHL Bank stock or excess stock of any class that the insurer must hold as a member of the FHL Bank.

Additionally, the FHL Bank must, upon a request of a receiver, provide any available options for the insurer to renew or restructure a loan to defer associated prepayment fees. The options must be subject to market conditions, the terms of the insurer's outstanding loans, the FHL Bank's applicable policies, and the FHL Bank's compliance with federal laws and regulations.

BACKGROUND

Insurers Rehabilitation and Liquidation Act

The IRLA protects the interests of policyholders, claimants, creditors, and the general public in the event of an insurance company's insolvency. It gives the insurance commissioner broad authority to monitor the financial condition of insurers and, when he believes necessary, to place them under administrative supervision or, with court approval, conservation, rehabilitation, or liquidation.

Federal Home Loan Banks

There are 12 regional FHL Banks, which were chartered by Congress in 1932. They are cooperatively structured, member-owned wholesale banks that provide members access to funding and liquidity. Insured depository institutions and insurance companies are eligible to become members in their region's FHL Bank. The banks advance funds to their members on a collateralized, fully secured basis.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/06/2014)